

MAINE PUBLIC UTILITIES COMMISSION
AUGUSTA, MAINE

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MAINE PUBLIC UTILITIES COMMISSION) July 26, 2012
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Dig Safe Stakeholders Meeting

APPEARANCES:

RICHARD DAVIES, Hearing Examiner
MATT KAPLY, Maine Public Utilities Commission
DEREK DAVIDSON, Maine Public Utilities Commission
KEVIN ISIHARA,
GREG CONNORS,
DAN WELLS,
PATTY MOODY-D'ANGELO,
DANA WARDWELL,
MATT MARKS,
JEFF MCNELLY,
DON JOHNSON,
BEN SANBORN,
BRUCE BROWN,
BOB BURNS,
BRUCE HUBGBARD,
CARL WALLACE,
SAM MURRAY,
MARK TURNER,
KEVIN MURPHY,
MARK LEVESQUE,
STAN GROVER,
KATHLOEEN DUMAINE,
ARTHUR BROWN,

1 CONFERENCE COMMENCED (July 26, 2012, 10:07 a.m.)

2 MR. DAVIES: We'll convene this meeting of the
3 stakeholder ... a more accurate reporting of what actually gets
4 said in these meetings. And one of the ways to improve ... and
5 then say whatever it is you're going to say. That way we can
6 capture that information, and the transcript will be much more
7 accurate than the first one was. ...You all have copies of the
8 transcripts ... If any of you have any errors or omissions to
9 that ... let us know after the meeting or send us an email with
10 any ... Why don't we go around the room and everybody introduce
11 ...

12 MS. MOODY-D'ANGELO: My name is Patty Moody-D'Angelo
13 ...

14 MR. WELLS: Dan Wells ...

15 MR. CONNORS: Greg Connors, Maine Municipal ...

16 MR. ISIHARA: Kevin Ishihara ...

17 MR. DAVIES: Rich ...

18 MR. MURRAY: Sam Murray ...

19 MR. TURNER: Mark Turner ...

20 MR. WALLACE: Carl Wallace ...

21 MR. HUBBARD: Bruce Hubbard ...

22 MR. BURNS: Bob Burns ...

23 MR. BROWN: Bruce Brown ...

24 MR. SANBORN: Ben Sanborn city of Bangor.

25 MR. BROWN: Art Brown, ...

1 MS. DUAMINE: Kathleen ...

2 MR. GROVER: Stan Grover, member of the public ...

3 MR. LEVESQUE: Mark Levesque ...

4 MR. MURPHY: Kevin Murphy ...

5 MR. DAVIES: Is there anybody on the telebridge ...

6 dj Don Johnson, Time ...

7 MS. MOODY-D'ANGELO: ... Sharon has physical therapy
8 ...

9 MR. DAVIES: ... just was handed some materials from
10 folks working on ... Jeff, do you want to say ... I will pass
11 it out. ... did a couple of worksho9p around the state ... one
12 of the items that was ...

13 MR. MCNELLY: Yeah, good morning, Jeff McNelly of
14 Maine Water Utilities Association ... pretty well set up, but
15 we usually have extra stuff to talk about ... We brought people
16 in. We -- we tried to get contractors, system operators, you
17 know, other people who are successful at doing that. This will
18 show you -- you all saw the agenda, so you know what we talked
19 about ... locating techniquesWe talked about
20 excavation. We talked about ... an additional feature, we
21 talked about natural gas coming to your town, are you ready for
22 that, because ... So we are -- this is -- you know, we should
23 treat this as a progress report. I got some comments that it
24 looked like it was a little fragmented ... I have end dates,
25 like October, November, when things have to get doneSo

1 we're having meetings, and there are some gaps, but we have the
2 meetings to keep things moving. So these are some of the
3 elements that we discussed ... and then field methods. And it
4 looks like these kind of run together or run on or may not run
5 together, but these are the issues that came up that we felt
6 should at least be talked about, seriously considered ...
7 something more than just a ... Safety's paramount, first of
8 all. Communication between the utilities and contractors is
9 critical. ... some facilities are more hazardous than others,
10 are a greater hazard than others, some are easier to locate
11 than others. We talked about having a good plan, you know, due
12 diligence up front. GIS records, paper records, anything
13 that you might have, and try to -- and this is something that
14 ... capture some information that might reside in the minds of
15 some of the more senior employees. We talked -- had a
16 conversation with the folks about how tolerance zones ...
17 that's eight feet in the ground a little bit differently than
18 ... On the other hand, it's good to know that if you think it's
19 four or five feet deep, it's good to have that conversation
20 with a contractor. ... good operating practices that we need
21 to try to get our arms around ... laterals, sewer laterals, it
22 could have been either becauseYou know, and I was kind
23 of surprised by that. Having the gas people there was
24 interesting and very helpful because they said, we throw ...
25 wasn't aware of them, but I don't dig in the street, either.

1 ... They ...

2 MR. HUBBARD: Yes, those are put -- right at the end
3 of the main or service to locate the exact ...

4 MR. MCNELLY: Yeah. So --

5 MR. DAVIES: Sam?

6 MR. MURRAY: ... they're good, but you've got to make
7 sure because they -- it's hard to locate them after they start
8 getting over five feet deep ... before you put a marker ball
9 in. There are some restrictions to those, but they do help.
10 Sometimes we're ...putting them on elbows ...

11 MR. MCNELLY: That's where you'd ...

12 MR. MURRAY: Right. We'd have it on our maps that
13 there's a locate ball ...

14 MR. MCNELLY: Yeah.

15 MR. MURRAY: So it does help, but there is ...

16 MR. MCNELLY: Right.

17 MR. MURRAY: -- as you guys go forward ...

18 MR. MCNELLY: ... a water main ten feet deep, and
19 they brought the piece of copper up so they could reach it with
20 a piece of rod, and if ... you should be in a better shape the
21 next time you go to do something, you know, at least in that
22 location. ... We talked about certain -- and I don't know what
23 these pieces of equipment are, but certain types of
24 locators, and the guy was talking about ground-penetrating
25 radar ... Services and laterals, we've talked about that. Some

1 people said they actually do take the time to locate laterals.
2 ... if you have a situation where you have -- if you -- if you
3 bore into a gas line or there is a leak, and it can travel
4 through a trench ... So it might be worth the time to
5 particularly locate laterals, ...where previously it might not
6 have been thought that that was that important. People talked
7 about ... We -- we took a look at that. And then we got down
8 to excavation practices ... And there again, we don't have all
9 the details ... the appropriate separation of gas from other
10 utilities. And we had one comment thrown outThat was
11 not so well received by the gas utilities, but we all learned
12 something from that discussion. Then the other point, which
13 kind of is my comment, ... that the legislature asked this
14 group to look at, but it ...

15 MR. DAVIES: And since it's so closely related ...

16 MR. MCNELLY: Yeah.

17 MR. DAVIES: -- it's not unreasonable for us to talk
18 about that.

19 MR. MCNELLY: Yeah. So that's where we are. It's a
20 progress report ... form a subcommittee, we can do that, if
21 people want to join up. ... We know where we want to be at
22 point X, and we just have to figure out a way to get there.

23 MR. DAVIES: ... Is that still the case that -- that
24 people still think that's .. Bruce?

25 MR. HUBBARD: I think it's going to be a great tool.

1 The ... can't locate it within 18 inches, it -- it gives a
2 little flexibility and movement. You know, you've got a gas
3 line, you've got good locates. You know, you've got marker
4 balls on it ... understand that, you know, you're not going to
5 go out there and get a fine if you're doing the best management
6 ...

7 MR. DAVIES: Anybody else that was at the workshop
8 have any observations ... how we might do that?

9 MR. MCNELLY: Just one more comment ... can't be a
10 safe harbor or inappropriate refuge, and if we do it, it won't
11 be ...

12 MR. DAVIES: Yeah, I think you ... BMPs that are
13 going to be set up ...

14 MR. MCNELLY: Expectations, at least.

15 MR. DAVIES: Yeah.

16 MR. MCNELLY: Yeah.

17 MR. DAVIES: So would your recommendation be that ...
18 how it ought to be structured, what kind of standards ...

19 MR. MCNELLY: That would be -- yeah, that would work
20 pretty well. We've got a good group, but we ... answer to that
21 question is we -- we brought the gas people in ...

22 MR. DAVIES: Yeah.

23 MR. MCNELLY: And that was really very beneficial ...

24 MR. TURNER: ... city of Waterville. Was there any
25 further consideration of broadening participation of the

1 component of railroad crossing ... under railroad crossings?

2 MR. MCNELLY: No, we didn't talk about that. But we
3 run into that ...

4 MR. TURNER: We're going to be doing two this year,
5 and quite complicated ...

6 MR. MCNELLY: Yes, yes.

7 MR. DAVIES: Is that ...

8 MR. TURNER: Uh-huh.

9 MR. MCNELLY: All you can hope for is ... repair the
10 tracks, right? '

11 MR. DAVIES: Mark?

12 MR. LEVESQUE: ... I mean, are we going to talk about
13 ... we're looking for a one-call system, and I don't know if
14 stalemate is the answer to this. ... BMPs addressing that at
15 all?

16 MR. DAVIES: I think that's a good question.

17 MR. MCNELLY: Well, our focus on the BMPs ... we're a
18 water association, you know. And even for our members, for the
19 laterals, it's -- the laterals are the laterals. ... five- to
20 eight- to ten-feet deep. ... but it's meant to -- you know,
21 create better situations in the field and more effective
22 collaboration amongst people, and hopefully fewer ...

23 MR. SANBORN: And it seems like the two items can
24 work together. What seemed from last meeting ... one of the
25 biggest disincentives was the uncertainty of liability and how

1 exactly is that going to get handled ... used as a tool to try
2 to get everyone on the one-call system. ... and it might be
3 industry by industry. And as you set that out, you then have a
4 situation where as long as you have the people in the field
5 doing that, then it is de facto ... which gives a pretty clear
6 way for the municipalities and for the water districts ...and
7 for people who may not currently be in the system ... expressed
8 at the last meeting, that when something happens, there's a
9 sudden rush ...

10 MR. DAVIES: Yeah.

11 MR. SANBORN: -- and so you have to figure out who
12 it's going to be. If you have ... make sure everyone's doing
13 it right, and if something goes wrong, ...

14 MR. DAVIES: Yeah. I would agree with that, and I
15 think these can be applied beyond water and sewer ... it's a
16 tool that can be used by almost any utility category ... And I
17 would suspect ... authorize these things to be developed and
18 set some stanrdards for them. So I'd think if we're going to
19 work ... that has some standards, that has some process ...
20 allow for some further development of that idea, once we have
21 ...

22 MR. MCNELLY: Yeah, just to follow up on a comment by
23 Mark, ... trepidation in that some people are concerned that
24 they might lose that local contact, back and forth. So that's
25 ... a valid concern. We had someone at the meeting say, I like

1 knowing ...

2 MR. SANBORN: Just to follow up on your comment ...
3 do evolve over time, and you want to get it right, but you want
4 to make sure it's not a static document ... but it's not going
5 to be possible to get everything perfect by the time this needs
6 to go back to the legislature ... ensure safety of the people
7 in the field and of facilities.

8 MR. DAVIES: Yeah. I would agree ... some principles
9 and some standards, but forward the issue onto an Advisory
10 Board ...

11 MR. GROVER: Yeah, Stan Grover. Jeff, did you and
12 your ...

13 MR. MCNELLY: No, we didn't. We -- we saw the
14 comments that someone sent in. I read those, the comments that
15 you distributed prior to the meeting ...

16 MR. GROVER: I would like --

17 MR. MCNELLY: ... did this on the fly because of time
18 ...

19 MR. DAVIES: Yeah.

20 MR. MCNELLY: But we could do that.

21 MR. GROVER: ... that we ought to get the latest copy
22 of the ...

23 MR. DAVIES: Yeah.

24 MR. GROVER: That's a national ...

25 MR. DAVIES: That's right. ... adopt all of them,

1 but it does provide you with ...

2 MR. GROVER: And it also -- right, and it ...

3 MR. DAVIES: Yeah.

4 MR. GROVER: ... these are the pros and these are the
5 cons. So it's a really -- a nice ...

6 MR. DAVIES: Yeah.

7 MR. MCNELLY: Is that available ...

8 MR. DAVIES: Yes, it is ...

9 MR. LEVESQUE: I provided it. I provided it.

10 MR. DAVIES: ... list of disincentives ... and I'm
11 going to pass those out right now, around like the second page
12 of this handout. Sam, can you pass those down? ... went
13 through those last year, getting ready for the last group, and
14 I found them ... A lot of material. You know, when you go to
15 download this, have plenty of paper in your ... compilation of
16 ...all of the ideas on disincentives that people sent in
17 following the last meeting ... appreciate Sam taking the
18 initiative to ... So the question may be, ...are there some
19 folks that would like to take a little bit of time offline ...
20 kick around some ideas of what might be principles or standards
21 ... more of a living document, something that we could have the
22 group take a look at at a future meeting ... Stan, would you be
23 willing to sort of ...

24 MR. GROVER: Yeah. Would you restate what you're
25 looking for? Is it ...

1 MR. DAVIES: No, I'm thinking --

2 MR. GROVER: -- what would be changed?

3 MR. DAVIES: ... assuming the legislature approves it
4 ... bringing BMPs into the process.

5 MR. GROVER: Glad to help out. I'm struggling to
6 figure out with Jeff's best management group, is ...

7 MR. DAVIES: I'm hoping that Jeff will have some ...

8 MR. GROVER: Okay.

9 MR. DAVIES: -- so that we have a cross section of
10 people who are interested ... BMP program --

11 MR. GROVER: Yeah.

12 MR. DAVIES: -- what kind of standards might be
13 expected ...

14 MR. GROVER: And this would be for ...

15 MR. DAVIES: Absolutely.

16 MR. GROVER: -- across the gamut?

17 MR. DAVIES: Yeah, across ...

18 MR. MCNELLY: You want us to work with Stan?

19 MR. DAVIES: ... participate in that process, I would
20 recommend that you get in touch with Stan and Jeff and see if
21 we can get a core of people who are ...

22 MR. MCNELLY: We could -- we could ...

23 MR. DAVIES: Good.

24 MR. SANBORN: One thing to stress, I think it's
25 really critical that we include as many municipalities ... lead

1 to a one-call system, I think we need to make sure that we ...

2 MR. CONNORS: I would agree with that.

3 MR. DAVIES: ...

4 MR. MCNELLY: ...

5 MR. DAVIES: Sure.

6 MR. MCNELLY: ... are not here?

7 MR. DAVIES: ... get out of the system that includes
8 a list of all the entities that are on the list, all of the
9 municipalities, water districts, and others. It's ...

10 MR. MURRAY: So did you just send that this morning?

11 MR. DAVIES: No, that was a different one.

12 MR. MURRAY: Okay.

13 MR. DAVIES: ... One of the things that I was able to
14 get from Bob ... locate requests for -- in those communities on
15 a month-by-month basis, so that any municipality ... I'm going
16 to pass these around, as well. This is the sort of thing that
17 gives municipalities ... a huge thing that we have to take on,
18 and in fact, for most communities, it's a small number,
19 relatively speaking ...

20 MR. GROVER: Rick, did Greg Connors ...

21 MR. DAVIES: ..

22 MR. CONNORS: ... did see it in ...

23 MR. GROVER: But could you ...

24 MR. CONNORS: ...

25 MR. DAVIES: ... so that it could be circulated to

1 other people, as well. And I thank the Commission for helping
2 us ... the list of disincentives that I passed around earlier
3 and emailed to you. I don't know whether having looked at
4 these things, they promptedClearly one of them is
5 going to be ... tolerance zone issue, but to the degree we can
6 identify ... starts eliminating reasons why municipalities and
7 others ... Stan?

8 MR. GROVER: Greg, yeah, on my comments, my first one
9 on disincentives, ..

10 MR. CONNORS: Uh-huh.

11 MR. GROVER: -- or your cities and towns are using
12 that, ... hit a water line in the Town of Fryeburg, but it was
13 Harrison Water District's line that went through the Town of
14 Fryeburg. ... it might be advantageous ...

15 MR. CONNORS: Map out?

16 MR. GROVER: -- map out that ...

17 MR. CONNORS: Right. You're talking about ...

18 MR. GROVER: Or a combination.

19 MR. CONNORS: ... take Dig Safe ...

20 MR. GROVER: ... that I had run into.

21 MR. DAVIES: Yeah. And Dig Safe ... by using the
22 default in other areas, and that might be a good example of
23 where mapping it might make good sense. Any other thoughts
24 about that list of disincentives, anything ... pursue more
25 fully in terms of trying to identify some ways to resolve them?

1 If not, if you've got any thoughts between now and the next
2 meeting, please forward them on. ...We'll continue to collect
3 these things and share them with folks as we go along. Okay.
4 The two topics we're going to talk about today are the -- the
5 issue of tolerance zones, which we've been through once before,
6 or most of us have, and the ... that Jeff McNelly had put
7 together, ... thought it was a useful item to have. This was a
8 document that Jeff had put together after we had taken our
9 initial vote ... down to 18 inches for everybody. And he
10 provided some useful information ... we are a learning
11 organization, and the legislature gave us reason to revisit the
12 issue, and I thought this was a good place to start on that.
13 When I was -- while you're ...looking at that, when I was ...
14 I'm going to just sort of read through it ... Some of the
15 things were, what underground facility ... member versus
16 nonmember ... depth of which the facility is buried ... Do you
17 want to talk a little bit about your thinking about this?
18 You've had another bite of the apple, and ...

19 MR. WELLS: As far as marking out?

20 MR. DAVIES: Just the whole issue of how we might
21 handle tolerance issues, given ...

22 MR. WELLS: It goes back to the BMPs, I guess. When
23 you go back to the BMPs, ... can't mark them out as well.

24 MR. DAVIES: Now, is it something we should leave
25 just to BMPs ... there to be a different tolerance zone for

1 some types of utilities?

2 MR. WELLS: You don't want to ... and then have that,
3 obviously, evolve as things happen. I wouldn't -- I don't know
4 what ...

5 MR. DAVIES: Yeah.

6 MR. WELLS: There's just no physical way.

7 MR. SANBORN: I just have a question about how -- how
8 the locating works, given an example ... but then the gas main
9 is also going to go out and mark its facilities, which will
10 presumably be more precise ... So wouldn't you, in that
11 circumstance, take whatever the smaller area is ...

12 MR. WELLS: You would have -- yeah, you would have to
13 take into account both marks. So if I have ...

14 MR. SANBORN: (?) ...

15 MR. WELLS: ... down five feet, and I know ...

16 MR. SANBORN: And maybe that is something you can
17 work out with the BMPs, when you're dealing with what is the
18 level of precision. ... and bad things happen.

19 MR. DAVIES: Yeah.

20 MR. SANBORN: And so it seems like there might be a
21 way to work things out ... where there's only one utility
22 that's buried, that may be an appropriate measure, based on the
23 information that's on the ground. ... and it might not be that
24 it's more appropriate to go ... that may accrue if you break
25 one versus the other. Sois it or is it -- and I don't

1 know the answer to this -- is it or is it not appropriate to
2 have ... figure out what's going to work for each type of
3 utility, to make sure that you have the safest structure --
4 system in place ...

5 MR. WELLS: Correct, because the rule -- the law is
6 ... we need to make it work for everybody.

7 MR. DAVIES: Yes?

8 MR. BURNS: Hi, Bob Burns, Town of ... storm drains.
9 And, you know, just so everybody ...

10 MR. DAVIES: Yeah.

11 MR. MURRAY: Yeah, Sam Murray, Unitil. ... that the
12 water and sewers were very concerned because they said that gas
13 is a lot more dangerous than water. And so to back up the
14 comments that were just made, ... granted, Bangor Gas probably
15 doesn't have facilities as old as us. I know ... just as deep
16 as water, sewer, drainage, all of that stuff out there. ...
17 ...the tolerance zone, that 18 inches, doesn't give us much
18 room ... was -- I mean, I'm looking at -- I mean, do we do --
19 if ... you have a water break out there, ... and still end up
20 damaging some of our lines because the frost -- because some of
21 our stuffthat's at 24 inches, with a frost, not even
22 knowing that you have a hold of it, ... it's also helping
23 provide the safety issues in there, too. Like I said, for the
24 most part, we do have ... that wasn't documented correctly back
25 in the early 1900's. And it just -- I'd like to see us come to

1 a common number, even if ... till you locate that facility. So
2 you keep that in mind also. Do you want to be -- if you're
3 working -- your'e a water department. ...If you want to work
4 around a sewer, do you want to ...

5 MR. WELLS: And we ...

6 MR. MURRAY: And I'm sure you do ...

7 MR. WELLS: We have both an operator and an ...

8 MR. MURRAY: Yeah.

9 MR. WELLS: So we have to follow ... that 36-inch
10 zone is a little better for some facilities. I have ... but
11 that's kind of hard to locate.

12 MR. MURRAY: Yeah. I'm not disagreeing ...

13 MR. WELLS: Yeah.

14 MR. MURRAY: -- ... yes, it is, and probably in most
15 cases. So that's why I would be looking at trying to give the
16 gas a little more tolerance ... cut our damages even in half,
17 just because they're supposed to dig in that 24 ...

18 MR. DAVIES: Mark ...

19 MR. LEVESQUE: Yeah, Mark Levesque, OnTarget. ...
20 fiberoptic cable ... that -- that we're dealing with here.

21 MR. DAVIES: Come up.

22 MR. MARKS: ... But a waiver process, to allow folks
23 in hard-to-locate facilities ... because at the end of the day,
24 ... that's why that's so important because going forward, as
25 new facilities are installed, ... more of a reality over time.

1 And ... pretty much the standard. ... that allowed for that
2 discussion to happen. ... I just think that's the -- that's
3 the ...

4 MR. DAVIES: Well, what's your thinking on the waiver
5 process?

6 MR. MARKS: ... it would have to happen ahead of
7 time, you know, where a facility locator ... we're not sure if
8 we can come within the tolerance zone of 18 inches. I think
9 Bangor had some cases ... I'm not sure they should be punished
10 ...

11 MR. DAVIES: Now, would the waiver be granted ...

12 MR. MARKS: ... legally how it would lay out, but I
13 think an agreement ... that this is a ...

14 MR. DAVIES: So that would fit into ...

15 MR. SANBORN: And it could, in terms of how it could
16 technically work, ... achieve specificity to ensure an 18-inch
17 tolerance zone. However, ... That will give the presumption of
18 the 18 inches, but you can have that sit down beforehand and
19 say, ... presumption of 36 when it's a gas facility ... not a
20 brightline must do of 18 inches, and encourage people to work
21 beforehand to figure out what ... is the right one for this
22 job. And if you don't get together, that's what you're
23 shooting for ...

24 (missed his name): ...

25 MR. DAVIES: Kathleen?

1 MS. DUMAINE: ... to allow for a contractor and a
2 utility to discuss the situation in the field and work it out
3 the best they can. I think the challenge that we've had with
4 that portion is that we've been held to a tighter standard when
5 it comes to penalties.

6 MR. DAVIES: The language of the law is a little
7 squishy ... would provide enough comfort to folks, perhaps.
8 Stan?

9 MR. GROVER: Yeah, a question. I'm all for the
10 waiver, or whatever ... document that? Because you -- the
11 worst thing we can do is -- is have some level of agreement
12 like that, that we're all for, then you get into a he said-she
13 said ...

14 MR. MARKS: No ... when it becomes a -- when you have
15 to have a hearing ... that subgroup that starts working on the
16 BMP ... I mean, I -- I don't think it should be too complicated
17 at the end of the day. ...

18 MR. SANBORN: I -- I think that is a good point,
19 however, that you are going to ultimately have some type of
20 documentation, but it doesn't have to be ... as long as you
21 have something that shows here's the correspondence that went
22 back and ...

23 MR. DAVIES: Sam?

24 MR. MURRAY: Yeah. Currently we do have a system,
25 it's called Dig Track, ... one of our codes that we put in ...

1 do note in there that this is an ongoing ticket, that we're
2 working with the contractor, and we ... As far as the law,
3 under my understanding, there really isn't a wiggle room in
4 there. If you do ... But my understanding of the law is that
5 there isn't really any wiggle room. ...I understand that we all
6 do it. We all ... but at the end of the day, if you make that
7 agreement and something happens, it's going to be like you
8 said, a he said-she said.

9 MR. MARKS: Uh-huh.

10 MR. MURRAY: -- and it's probably not going to stand
11 up in court. ... So we have a document we can back up. We
12 videotape all of our ... This is where the facility is that got
13 hit. So we do a lot of stuff that probably a lot of the
14 companies out there aren't doing. ... They are going to
15 happen. We all know it. And we're in ... with the water and
16 sewer and over -- electric, and everything else. ... some
17 of you guys have deep facilities ... especially older pipes of
18 water, sewer, electric, everything that's out there is very old
19 stuff, our gas, it's really tough sometimes marking ... And I
20 understand where Bob was coming from, too, because he doesn't
21 want the guys out there -- the -- the wider that tolerance zone
22 ...

23 MR. SANBORN: And just on the legal aspect, right now
24 in the law it's a strict liability ... move into something with
25 Best Management Practices, there would have to ...

1 MR. MCNELLY: Jeff McNelly again, just quickly.
2 There is an exemption, and it's coupled ... We remember that
3 day when they all showed up in flannel shirts. And ... So
4 there is a template there.

5 MR. DAVIES: Yeah. We might have to make it a little
6 more robust, perhaps. Bruce?

7 MR. HUBBARD: ... definitely need to stay with a one
8 tolerance zone, to get everybody on board. I think that if we
9 put this ... BMP, that both the utility and -- and the
10 contractor can sign off together. Prior to, I think it's a
11 good working document that -- that we cannot up here
12 at a PUC hearing, doing the he said-she said scenario.

13 MR. DAVIES: I think you're right. It's fine to get
14 these things in place ... knows what provisions are included in
15 any particular BMP, and you've agreed on tolerance zones or
16 other areas that you're going to work out between yourselves,
17 and that gives you a written document ... a he sai-she said
18 fingerpointing episode.

19 MR. HUBBARD: I think ... if -- if somebody has an AC
20 line that's 12 feet in the ground, and there's no way of
21 locating it, that, you know, they do up a little hand agreement
22 and -- and go at it. And God forbid, if something happens, at
23 least you've got ...

24 MR. DAVIES: Yeah.

25 MR. MURPHY: Kevin Murphy ...

1 MR. DAVIES: ... put together a document ... a
2 variety of topics to create your own document from, and that
3 way you -- you know, it's a lot easier to assemble something
4 like that in short order ... pull it down when they wanted to.

5 MR. WELLS: Dana ... on the end, if you do hit a
6 utility, for the owner and the excavator to determine, well,
7 you did your best, and you know, let's not file this one. We
8 used to do that, and -- and I guess at some point the law
9 requires us to now file a report with the PUC, where you used
10 to be able to work that out between the organizations. ...And I
11 guess the city of Bangor's position on the one-call system is
12 that we feel we've got a system ... on all of our street-
13 opening permits, before we issue a street-opening permit ...
14 nonmembers in our community, Bangor Water, Public Works, Sewer,
15 and we're getting notified. So I guess there's not a lot of
16 incentive for us to want to be part of ...

17 MR. HUBBARD: Dick?

18 MR. DAVIES: Yes.

19 MR. HUBBARD: ... if somebody doesn't pick up your
20 okay-to-dig ... I've got everything filled out because I have
21 my Dig Safe ticket. Now they're making multiple ... It would
22 be a lot easier.

23 Dana It would be ...

24 MR. HUBBARD: Yeah.

25 MR. KAPLY: ... really quickly, I think what I'm

1 hearing the group talk about is ... opt out of that portion of
2 the statute, as far as tolerance zones or other conditions, as
3 a way of avoiding -- ... caution the group in thinking about
4 the way it's sort of stacking up ... might determine who has
5 what responsibilities, and I think you would want to avoid, or
6 you would want to be cautious about bringing something like
7 that ... as an enforceable document, or asking the Commission
8 to enforce that kind of agreement between two parties. ...So as
9 opposed to ... of regulating those things under the statute,
10 really thinking about it in terms of an opt out ... a
11 contractual -- a contractual dispute. It would be a whole
12 different ...

13 MR. SANBORN: Just to -- to respond a little bit, I
14 think that if Best Management Practices were put into place,
15 there would have to be -- ... in lieu of some of the items that
16 exist today. ... And, essentially, the way I would envision
17 Best Management ... And the written agreements in regards to
18 tolerance zones, would be -- would have to be ... And so,
19 therefore, it wouldn't necessarily be a contractual issue ...
20 If the answer is yes, then from the Commission's point of view,
21 there is no penalty. want to take it up in civil court,
22 that's fine. They're never prevented from doing that. But ...
23 And the -- the goal here is to get some Best Management
24 Practices that say if you follow this, then you may still have
25 to pay for damages that you do to other equipment, you may have

1 some alternate liabilities in civil court ... what are you
2 opening yourself up to for liabilities in front of the
3 Commssion. And the goal here is to say if you follow ...
4 ...If you do not follow these, you will be negligent and there
5 will be consequences at the Commission. ... which is much more
6 rapid and much more decisive than what would happen if you had
7 to go to court on something ... So I think that's how the --
8 the Best Management Practice structure would have to be
9 implemented ...

10 MR. DAVIES: I think that's right ... in advance so
11 that there's something they could look at that comports with
12 what the standards ... then say, in lieu of this provision of
13 the law, we are implementing the following BMP, and here's the
14 provisions of it and have that in place. Dana?

15 Dana ... all in favor of BMPs, but I guess I'm
16 curious ... when you're an excavator and you follow the ... or
17 is it up to the -- the utility owner to determine they were
18 followed ...

19 MR. SANBORN: That would be the Commission ... how
20 did it get marked, how did it get excavated, what was the
21 scenario that happened around this circumstance ...

22 Dan So --

23 MR. SANBORN: Then they would be the determinant of
24 that.

25 Dana So we ...

1 MR. SANBORN: Potentially, yes ... and give you a
2 really clear sense of as long as I act in this way, then I'm
3 not acting negligently. And that's really what Best Management
4 Practice ... akin to saying industry standards ... It's going
5 to be intended to be along the lines of what people are doing
6 todayAnd so it would be not sort of a set of
7 regulations imposed in addition to how you operate. It would
8 be attempting to really codify how you're operating today.

9 MR. DAVIES: I would see it as almost an alternative
10 compliance mechanism ... propose a document of Best Management
11 Practices that would ...

12 MR. GROVER: Yeah, if I could, Matt, could you --
13 you've told us what you think the group ought not to do ...

14 MR. KAPLY: Well, I have a concern. I don't really
15 have ... create an exemption through the use of BMPs. ... what
16 Ben is talking about, which is essentially an investigation
17 that ... more nuances generally means more room to fight. My
18 thought would be -- is that -- and also I guess I would say
19 that -- and this is -- ...this is -- I'm sorry, folks, this is
20 the part where I talk to Ben ... the Commission has understood,
21 and Kevin will probably remember it because it was his case --
22 ... And in order to prove negligence or disprove negligence ...
23 because it is complicated, and changes from circumstance to
24 circumstance. So the problem with saying a certain thing is
25 always going to be negligenceAnd that doesn't lead me

1 to ... what you should also do is you should use that as an
2 opportunity to change the language, reckless and negligent, in
3 the statute, to get away from that ... mismarked or didn't
4 mismark, which is fine, but ... as a way of compliance, I would
5 suggest that you at least, at the very least, ... you can't
6 look forward into the future and say this thing, in all
7 circumstances, will never be negligent. And the solution to
8 that is to get rid of the word negligentMy only other
9 concern is exactly what the gentleman from Bangor said, that
10 ... adopt external documents into compliance, so documents that
11 are created by each actor and then agreed to by other parties,
12 you are creating ... if it comes to the Commission for
13 decision. Not on our end. We deal with complicated matters
14 all the time, but ... paid experts. And I do think as a group,
15 that's sort of what you want to get away from, at least that's
16 what I've been hearing. ... get copies of your BMPs, and then
17 attempt to investigate ... And that's certainly something you
18 can do. ...But I would at least encourage you, if that's ...

19 MR. SANBORN: I would actually agree with that. What
20 I was considering was not ... a set of what are the Best
21 Management Practices, and then that is what is enforceable.
22 ... with regard to tolerance zones that is different from the
23 standards that are set forth in your general Best Management
24 Practices.it's like the common ground alliances
25 practices, that that's what's out there ... may have some

1 subsections that allow you to create a separate agreement for
2 an excavation, and that would have to be done ... why are we
3 trying to do this. It's not to make it simple. We're looking
4 for the right solution, not the easy ... how do we get this to
5 be something that everybody can work with, that gives the
6 clarity ... best way to ensure maximum safety, that ... that
7 magnifies by seven times that somebody's not going to make the
8 call and something's going to get hitWe have to get
9 there in a way that the municipalities ... it's got to be
10 something that we're all working together on for the public
11 safety. And that's -- that's the answer as to why I would
12 change it, because it is ... you're going to improve your
13 overall effectiveness, efficiency, and safety of the system.
14 And if we can do that ... is not easy, but right.

15 MR. KAPLY: There's one other thought around getting
16 a one-call system, ... okay-to-dig database that the Commission
17 ... profound and widespread unhappiness about that ... One of
18 the thoughts that had come up, given ... index by town. And if
19 they could index by town, I think it would certainly be
20 possible for them to basically takethat goes out when
21 somebody ... seem feasible that the Commission could contract
22 with Dig Safe to do it. ... I'm not clear on why the group
23 wouldn't want to ask Dig Safe whether or not under ...

24 MR. GROVER: Can I follow up on that?

25 MR. DAVIES: Sure, Stan.

1 MR. GROVER: ... make sure I did hear what I thought
2 I heard. You're proposing that Dig Safe would incorporate ...
3 on their tickets at the town index level; is that correct?

4 MR. KAPLY: That is the thought that occurred to us,
5 ...

6 MR. GROVER: Okay. ...

7 MR. KAPLY: I think that we would probably update it
8 the same way we do now. ... better if they were members. But
9 we're compiling and updating that on a yearly basis anyway.
10 Whether or not you want to require municipalities to give an
11 email address ... to take on any additional burden, but the
12 idea of simply submitting an email address once a year, or a
13 fax number, would ...

14 MR. HUBBARD: Let's go back to the -- let's pick
15 Bangor Water, just since it's ... slide them over to the Dig
16 Safe system. Do they now -- the tolerance zone ...

17 MR. KAPLY: ... Rather than -- I mean, there are a
18 bunch of issues that ... If you want to get that down to one,
19 this is an avenue to do it. And it -- it occurred to us in
20 part because we just had a Dig Safe case ... and faxing their
21 Dig Safe tickets to nonmembers. So, I mean, it essentially
22 would -- if it's something we could do ... But again, this is
23 something we pay for, and we pay for it on a yearly basis.
24 ...The additional cost isn't for mapping and it isn't for calls
25 coming in. It's for an email ... you would make your phone

1 call, you would indicate you're doing excavating ... But, yeah,
2 that's separate than -- that would be separate ... a relatively
3 viable way of doing it. Dig Safe is already -- they already
4 have the technology to do these things.It seems to
5 make sense that if you index by street, you can index by town.
6 ... but realistically, I don't know that nonmembers are getting
7 notified of every excavation that occurs in their town, anyway.
8 But ... certainly have an idea of how many tickets or calls ...
9 We generally feel that membership costs are less expensive than
10 nonmembers think they are.

11 MR. DAVIES: Let's ... give the recorder ...

12 MR. GROVER: You want to come back ...

13 MR. DAVIES: We'll come back to this subject.

14 ...CONFERENCE RECESSED (July 26, 2012, 11:31 A.m.)

15 CONFERENCE RESUMED (July 26, 2012, 11:45 A.m.)

16 MR. DAVIES: Okay. Let's -- let's return to the idea
17 that Matt Kaply threw out ...

18 MS. DUAMINE: Yes, Kathleen Dumaine with FairPoint,
19 and also speaking now as the Chairman of the Dig Safe ... We
20 need to drive membership. We need to see that there's not
21 discriminatino within the law, where we discriminate between,
22 you know, people who are ...

23 MR. DAVIES: Stan?

24 MR. GROVER: Yeah, I'm Stan Grover, member of the
25 public. I used to be ... While I think it offers some promise,

1 if you think of it in terms of Dig Safe, Mark is the excavator,
2 calls in at 2:00 ... The excavator isn't going to notice any
3 difference. Dig Safe has got to be able to get hold of ...
4 Matt made the comment, well, you could get the nonmember
5 entities to give you an email address once a year. ...
6 ...because if Kentucky doesn't get confirmation back, ...
7 whoever the nonmember is is notified of that digging, so that
8 the excavator can ... my sense is that Dig Safe is going to
9 want them to be members so that they come under all the rules
10 of a member ... that they have to agree to maintain contact
11 information. I think it's a very good stepping stone, but
12 there are some huge liability issues there.

13 MR. DAVIES: My question is what would be necessary
14 in order to satisfy Dig Safe's concerns that isn't so
15 alienating ...

16 MS. DUAMINE: Again, Kathleen Dumaine with FairPoint.
17 I think overall ... here for, you know, the municipalities and
18 water companies and those that are currently nonmembers. I
19 think that the bigger picture is, number one, ... some
20 restructuring work there. And number two, the penalties.

21 MR. DAVIES: Anybody else have any thoughts on the
22 idea?

23 MR. BROWN: Art Brown, Central Maine Power. ... The
24 current list is I think a good intention, but there are several
25 names and numbers on there that are outdated by several years.

1 In the middle of the night, for example, we've woken up
2 surviving spouses of people who have passed on four or five
3 years ago that used to be ... Phone numbers are wrong. If that
4 was passed along to Dig Safe, Inc., Dig Safe, Inc. would now
5 be the party responsible ... there's no legitimate
6 responsibility of them to maintain their contact list. As a
7 member of Dig Safe, like utilities, we're required to keep that
8 information current and up to date. ...I mean, ... today it's
9 not. There's no incentive. There's no penalties, no
10 requirements that really force ...

11 MR. KAPLY: There are no -- there are no penalties or
12 incentives to enforce nonmembers to do anything. I mean,
13 that's not built ... idea of -- there would need to be
14 additional ... Okay to Dig database does not meet the
15 requirements of either notifying nonmembers ... said this to
16 Stan. I'll say it ... if you try to call any of them in the
17 middle of the night, you're not going to get anyone. Can
18 we figure out a way to get -- to get updated contact
19 information so that an excavator can meet ... would we require
20 an excavator, you know, for the Bingham Water District, to
21 figure out who ... It doesn't happen now. But I am pretty
22 confident that if ... particularly with Bob in the room, ...
23 are obviously things that need to be addressed. But the truth
24 of the matter isThe group is identified, but it is
25 ineffective ... more currently involved in prevention, which is

1 not to say that nonmembers are not involved now, but to be more
2 involved ... occasionally needing to update contact information
3 is really all that heavy. And if it ... I think that would
4 probably be a benefit.

5 MR. DAVIDSON: Hi. I wanted to -- to maybe throw ...
6 and it seems like that's the primary goal, one of the things
7 that I'm hearing is that the penalty side of things is a major
8 obstacle. And for me, it shouldn't be. And let's try to
9 figure out a way that it isn't. The goal is to get everybody -
10 - you know, get everybody's names in the system so we can
11 ensure safety and things aren't hit. We alreadyMaybe
12 that's where you'll end up, continued. A penalty process could
13 work the same way. There could be restrictions in the statute
14 about penalties ... So I think rather than -- you know, I've
15 heard -- the group's been really getting into some complicated
16 areas ... the major goal right now is to get a one-call system,
17 and you've got some other things ... maybe looking at what's
18 the major stumbling block here right now, and if there's some
19 low-hanging fruit. ... maybe it's worth some discussion.

20 MR. HUBBARD: I guess the only way ... hands down.
21 We all have one tolerance zone, and we all live by the same
22 rules. There's nothing to say that Portland Water has to
23 follow the rules, why doesn't A Water Company or B Water
24 Company ...

25 MR. DAVIDSON: Well, one of the things that I've been
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1 hearing ... some variations in depth and danger of hitting
2 things. There's going to be a lot of variation if you have
3 that. ... to nonmembers becoming members, it wouldn't be that
4 hard to say ... I hate to hear -- I think if you asked how many
5 even member municipalities, how many actual -- how much they
6 actually pay in penalties, the amount is not worth having
7 people being members. ... that's low-hanging fruit for the
8 group because you can come up with a way ... I'm just throwing
9 it out as an idea to encourage the -- what you're trying to
10 achieve is the one-call system.

11 MR. SANBORN: I think the only downside of that ...
12 What about the companies that were not required to join the Dig
13 Safe system, but ... And what about everybody else? There's
14 now a different penalty structure ... How do we do this, but
15 how do we do this in a manner that's fair to everybody? And
16 also, with regard to the complexity, ... just sort of look at,
17 and instead of saying, how do we create something brand new,
18 ... and do something that's hopefully going to address ... that
19 is going to create a system where everyone within the system is
20 created equally, and at the same time alleviates the concerns
21 of opening yourself up to too much liabilityIf we have
22 something that's a best management practice based on a national
23 group working on it, ... I -- I just don't see the complexity
24 argument. I don't see why -- why that would be complex.

25 MR. DAVIES: Stan?

1 MR. GROVER: Yeah, I certainly appreciate what's been
2 placed on the table ... as to what their take is on this?

3 MR. DAVIES: Sure.

4 MR. GROVER: Not blocking ...

5 MR. DAVIES: Yeah. Anybody? Kevin?

6 MR. ISIHARA: Kevin Ishihara, Portland Water ... the
7 check request before the General Manager when we get fined.
8 Generally, our fines are \$500 ... and that -- that's Portland
9 Water. That's not speaking for Bingham Water. That would be
10 an enormous amount of money for them, I suspect. ... Most
11 of the cases where we've been fined we haven't been reckless or
12 negligent. ... We got fined on probably 14 of those. I think
13 we do a pretty good job. ... Reckless and negligent has -- has
14 a meaning that we don't think we've met. ... almost a thousand
15 miles of pipe. But we're ... I'll still advocate for
16 membership. I think it gives us an opportunity, ...

17 MR. DAVIES: Any other utilities or people ...

18 MR. MURRAY: Yeah, Sam Murray, Unitil. I do want to
19 kind of mirror what Kevin was saying. And, I mean, we have ...
20 our goal to keep it under \$10,000 for the year. And with our
21 tickets, we're -- we're up to about 12 to 14,000 a year ...
22 Again, if you look at some of the smaller companies, look at
23 the numbers of tickets that they have, that they -- I mean, the
24 possibility of them getting ... or that municipality should
25 have more training out there. And I'm not saying anything

1 derogatoryI'm just saying that no matter -- I mean,
2 we're -- Kevin and I are in areas we're going to get hit sooner
3 or later ... where we get our fines from. And like we said, if
4 you look at the number of ticketsas of a couple of
5 days ago, ... I don't think that should be a disincentive for
6 the other utilities, municipalities ... And that's the whole
7 idea of this whole group, is to ... we put certain jobs under
8 high risk, which we track those. We go out and we work with
9 the contractor through their whole projet because they are
10 going to be in close proximityIt's just something that
11 we're doing for our damage prevention. We're trying to be as
12 safe as we can out there and keep all that down to a minimum.
13 But again, the disincentives shouldn't be the fines. ...
14 unless like I said, they were totally negligent on -- they
15 didn't even go out and mark it, give the contractor some idea
16 ...

17 MR. DAVIES: Greg?

18 MR. CONNORS: Greg Connors, ... But I would guess
19 that if I surveyed -- and I certainly can do that, and ... are
20 going to be what I hear from membership. And so I guess what I
21 would say is I could certainly -- if that's something the group
22 would like to see me do, I could send out a survey ... A, and
23 then B, maybe some of their thoughts on how to ... That's just
24 a thought.

25 MR. DAVIES: That would seem to be a useful piece of

1 information to have. We've speculated ...

2 MR. CONNORS: And you have folks here ...

3 MR. DAVIES: Yeah.

4 MR. CONNORS: But if you want me to reach out to some
5 of the ...

6 MR. DAVIES: ... different types of situations, and I
7 would find that useful information.

8 MR. CONNORS: Okay.

9 MR. DAVIES: Bob?

10 MR. BURNS: Bob Burns out of Gorham. ... by
11 definition, stormwater gets ruled out. I don't think it does.
12 ...

13 MR. DAVIES: Yeah. I'm not sure what the answer to
14 the ... that it's not. Dan, what's -- what kind of impact ...

15 MR. WELLS: No, we -- we haven't had any penalties.
16 We have had a few ... not been penalized at all. But we do
17 have the same concerns with reckless and negligent. Once
18 you're ... Maine Tort Act goes away ...

19 MR. DAVIES: Yeah.

20 MR. WELLS: -- and ... kind of leaves us and ...

21 MR. DAVIES: There seems to be some interest ...

22 MR. SANBORN: I think it's how you get it out --

23 MR. DAVIES: Yeah.

24 MR. SANBORN: -- is the other thing. ... It's a
25 question of do you get something out that tries to tailor the

1 structure so that you can ensure that you're not getting a
2 situation where you're doing 9,000 excavations, you have 14
3 that you weren't negligent on but you still get fined on, the
4 question is how do you address that structure. And I know that
5 the Commission ...has taken steps to address that also. ...
6 one of the TAM members, where there was an NOIE ... signed it
7 and sent it back. And that there's a situation where it was
8 noticed, it can have an impact down the road if they do it
9 again, and that's appropriate. So I'm not saying penalties
10 should go awayhow do you -- how do you adjust it to
11 make sure that it doesn't act as a disincentive. And that's
12 sort of the idea of going to the Best Management Practices in
13 lieu of ... The idea is to try to incentivize, or at least
14 remove the disincentiveBut I think you have to look
15 down the road ... And if we can make something that's as smooth
16 of a road as possible, so that people can say, look, it's
17 really -- I'm not going out on a limb to join this ... maybe
18 that is now worth it. I don't know. That's the hope here, to
19 try to get everyone to want to come on ... So that's what we're
20 trying to do here, is try to come up with something that might
21 work. So maybe one of the questions ... when you're polling
22 ...

23 MR. DAVIES: Ben, are you envisioning, as a way of
24 resolving the reckless and negligent piece, ... and they follow
25 through, comply with that, that they would not then be subject

1 to the reckless and negligent provisions?

2 MR. SANBORN: ... I'm not sure how this would work
3 ideally, is that you would eliminate the current language about
4 what is subject to a penalty and instead put in that here a
5 Best Management Practices document will be adopted, and that
6 failure toAnd then within the Best Management Practice
7 is where you get into ... You set that up as sort of a more
8 organic document, and it gets away from the birghtline, and I
9 understand why there's a value to a brightline ... This becomes
10 and surrogate for that ... in othery venues, but you're not
11 going to get fined by the Commission, but if you don't, ...
12 It's just if you fail to follow the Best Management Practice,
13 you may be fined, and that's it ... X, Y, or Z.

14 MR. DAVIES: Would you be sillling ...

15 MR. SANBORN: Sure.

16 MR. GROVER: ... already going to volunteer ...

17 MR. DAVIES: ...

18 MR. SANBORN: Excellent ...

19 MR. DAVIES: ...

20 MR. SANBORN: Yes, I'd be happy to.

21 MR. DAVIES: Thank you for ...

22 MR. MURRAY: And it sounds like it's coming from a
23 lot of people, the one thing, and I think you'd probably agree
24 ... And I believe Matt was under the same -- we should try to
25 eliminate that. But in eliminating that, work that in in that

1 same area of following Best Practices, which is what we going
2 to try ... That will determine the severity of a penalty, help
3 determine the severity of a penalty going forward, too. ...
4 ...Penalties are there so that everybody is going to try to
5 work safely out there ... because they're -- they're working as
6 safely as they can. But accidents happen. ... and they don't
7 understand the rules ...

8 MR. DAVIES: I'm going to give Dana the last word on
9 this topic ...

10 MR. WELLS: Yeah, I guess I'm just a little curious.
11 Are these Best Management Practices mostly geared toward the
12 utility ...

13 MR. DAVIES: My recollection from reading ... both
14 situations, yeah, and they're fairly detailed, already things
15 that have been developed by national groups ... So we can build
16 our own system, but you start with something somebody has ...

17 MR. WELLS: So we don't reinvent the wheel?

18 MR. DAVIES: Yeah.

19 MR. WELLS: ... zone, and --

20 MR. DAVIES: Yeah.

21 MR. WELLS: -- either you did or you didn't, you
22 know?

23 MR. DAVIES: ... disincentives piece that I passed
24 around. That will give you the ability to go to the Common
25 Ground Alliance ...

1 MR. DAVIDSON: Can I -- can I just say ...

2 MR. DAVIES: Okay.

3 MR. DAVIDSON: I just want to say a quick thing on
4 the ... It's very -- when I first started looking over this --
5 this rule and statute, it's very peculiar to have ... And the --
6 -- the rule -- I'm hearing there's a lot of linkage between the
7 ... I don't see, from -- from my perspective, there would be a
8 lot of difference ... we're already required to consider six or
9 seven requirements, and a lot of those things are the same
10 thingsI have always questioned the value of it. And I
11 understand that maybe from Ben's perspective, it -- it -- it
12 ... you've got nonlawyers enforcing this, to begin with, and
13 you've got nonlawyers, in general, complying with it. ... I
14 don't know why anybody would want that. I don't see ... to
15 argue a nuance is far outweighed by the liability that
16 potentially pulls in.

17 MR. SANBORN: No, I understand that. I was actually
18 involved when the language ... It's only if somebody did
19 something actively wrong. And initially we were talking ...
20 and now, all of a sudden, what was supposed to have been a
21 reckless ... then you go from the idea that if it's just an
22 accident, you ... Get back to the idea of if it was a simple
23 accident but you were ...

24 MR. DAVIES: We'll come back to this issue at another
25 day to -- write down your notes and we'll come back to it ...

1 the idea of an Advisory Board, which is one of the directives
2 that we received from the legislature. And much of what we've
3 talked about here are things ... in trying to resolve, without
4 the pressures of a deaadline by which you have to get a report
5 in. ... a relatively short deadline by which we have to decide
6 whether we're making recommendations ... And the value of an
7 Advisory Board is that without having a deadline ... to talk
8 across the lines with one another and try and find areas where
9 compromise might be possibleBen, I know you have taken
10 quite a lead on this subject on the past, so let me give you
11 the opportunity to weigh in right now.

12 MR. SANBORN: Sure. I think a lot of what we talked
13 about, like you said, lends itself ... that it stays current
14 and that it is something that everyone is able to chime in on
15 that. As we, hopefully, ... who staffs it, what's the funding,
16 etc. There's a section of law for boards of this type, that
17 they are advisory committees. That'sBut -- so what I
18 had envisioned when we had talked about this ...
19 telecommunications for the deaf and hard of hearing. Nobody
20 gets paid ... the meetings get held on a quarterly basis ... No
21 one is authorized to be compensated. That's all I was thinking
22 of. I wasn't thinking of a major structure. And that is one
23 of these advisory ... that I think we can do with a ... fiscal
24 footprint.

25 MR. DAVIES: Yeah. And it's always possible that

1 those can be ...

2 MR. SANBORN: Yes.

3 MR. DAVIES: And a group of this size ... might be
4 willing to make some kind of contribution that would be
5 sufficient ... that certainly would be an option ...

6 MR. SANBORN: Yeah.

7 MR. DAVIES: Anybody have some thoughts on this?
8 Stan?

9 MR. GROVER: Yeah, Im' all for an advisory board, and
10 if you look at Common Ground, there are two or three examples
11 of advisory boards, some with way too much authority, in my
12 opinion, compared to what I think this group is envisioning ...
13 and I think that might very well want to continue. Certainly I
14 heard what you said, utilities funding this. I don't know if
15 that's viable or not. But I agree with Ben, we don't need
16 eight people. We just need a -- a Chair to bring it together.
17 And then the other ...

18 MR. DAVIES: Yeah.

19 MR. GROVER: -- with the majority of your meetings,
20 which helps ...

21 MR. DAVIES: Yeah. Do you envision ... not
22 dissimilar to what the Common Ground Alliance ... suggest what
23 ones might be appropriate to adopt in Maine?

24 MR. GROVER: I think you could do that. I think ...
25 MUST training ... no, it's not the law. This is the direction,

1 you know, what's required. ...

2 MR. DAVIES: Yeah, which then may become the basis
3 for BMPs.

4 MR. GROVER: Yes.

5 MR. DAVIES: Greg?

6 MR. CONNORS: How would you determine ...

7 MR. DAVIES: There have been some drafts that were
8 done by the last legislature, if my memory ... categories that
9 would be identified that cover the spectrum. In fact, you
10 might ... turn that into the basis for appointing members by
11 the Governor to serve on an advisory board.

12 MR. SANBORN: And one of the things that came up as a
13 concern ...

14 MR. CONNORS: Exactly.

15 MR. SANBORN: -- enough people that ...

16 MR. CONNORS: Okay.

17 MR. SANBORN: -- how to break that out. But I think
18 it's critical that ...

19 MR. DAVIES: Yeah.

20 MR. SANBORN: And so I think it has to -- that makes
21 it a certain size. I mean, probably something like this, and
22 then utilize subcommittees for flexibility ... So it's not just
23 a simple majority situation, but it's also not a hundred-
24 percent-consensus situation. ... Maybe puts something in the
25 law that ... a new bill in if there's a big issue that comes

1 up. That's sort of the technical -- the nitty-gritty details
2 ...

3 MR. CONNORS: And you'd rely ...

4 MR. SANBORN: I would think so. I think that's the
5 way you're going to be most flexible. Honestly, ...

6 MR. CONNORS: True.

7 MR. SANBORN: And so ...

8 MR. CONNORS: You're willing to hear that, yeah.

9 MR. SANBORN: ... allows what may in the past have
10 been an unwieldy group ... chime in on the specific issues.

11 MR. CONNORS: Okay, thanks.

12 MR. DAVIES: Does anybody have any reservations about
13 the idea, specific or general? We've heard from some people.
14 Jeff said earlier he was ... caveats on that, limitations, or
15 thoughts?

16 MR. MCNELLY: Jeff McNelly again. We recommend the
17 group elect a Chair ... having the Public Advocate be the
18 Chair. If it's structured under the Office of the Public
19 Advocate, if ... go by the wayside like State Planning did ...

20 MR. DAVIES: We're working very hard to stay ...

21 MR. MCNELLY: I know that. But I'm on a committee
22 that's structured ...

23 MR. DAVIES: Yeah.

24 MR. MCNELLY: You know, we still meet, but we don't
25 really have ...

1 MR. DAVIES: Yeah.

2 MR. MCNELLY: I don't think that's going to happen,
3 but --

4 MR. DAVIES: ... would require some correction in the
5 ... that redress.

6 MR. MCNELLY: That committee I'm talking about ...
7 try to make that happen at the legislature.

8 MR. SANBORN: Well, I think that -- that the
9 structure that exists today ... even if we utilized resources
10 from other state agencies, that it -- it would not be in danger
11 of being eliminated if something happens ... happen to the OPA.

12 MR. DAVIES: Stan?

13 MR. GROVER: Somewhat related, and ...

14 MR. DAVIES: I'm used to it.

15 MR. GROVER: Would it be possible to purchase copies,
16 latest copies, of the Common Ground Best Practices, one for
17 each person that's on this committee ...

18 MR. DAVIES: Uh-huh.

19 MR. GROVER: Number two, they don't have to -- to try
20 and print out this ...

21 MR. DAVIES: It's pretty --

22 MR. GROVER: ... something like that.

23 MR. DAVIES: ...

24 MR. GROVER: ... get away from copyrighting all
25 these, I don't know. But my sense is -- oh, we canb. I defer

1 to Kathy.

2 MS. DUAMINE: I'm sorry. We can get copies. I will
3 get -- I will work with the ...

4 MR. DAVIES: Okay.

5 MS. DUAMINE: So we can get those at no cost.

6 MR. DAVIES: Wonderful.

7 MR. GROVER: ... read that --

8 MR. DAVIES: Yeah.

9 MR. GROVER: -- and look at some of these ...

10 MR. DAVIES: Yeah.

11 MR. GROVER: -- ... talking about --

12 MR. DAVIES: Yeah.

13 MR. GROVER: -- and at least everybody's on the same
14 page.

15 MR. DAVIES: ... one of these evolving, organic
16 documents that's constantly looking for ways ... that's the
17 kind of theing that we're going to be looking for. We want
18 this to continue to be ... do things right, we eliminate dig
19 ins, we eliminate costs, and all those things that benefit
20 everybody involved. Kathleen?

21 MS. DUAMINE: ... circle back on the advisory
22 committee. I'm fully in support of that ... yes, we need to
23 narrow down, and you know, I'm sure we'll get there and it will
24 take some time ... that we continually learn and need to
25 evaluate and re-evaluate what's going on in the excavation

1 community and in the locating community. And so I think that -
2 - you know, I'm 100 percent behindAnd -- and then when
3 -- just one little comment on the reckless and negligent ... a
4 figure for my -- my company, for FairPoint. ... We've had
5 seven mishaps due to locate.

6 MR. DAVIES: That's a pretty good ...

7 MS. DUAMINE: Not reckless and negligent.

8 MR. DAVIES: Any other thoughts on advisory boards?
9 I'm going to throw out ... One of the things that advisory
10 boards sometimes have difficulty in doing is after they have
11 done their work ... perhaps one or more members of the
12 legislative committees that would be dealing with the laws that
13 are part of the underground protection system would be on as ex
14 officio to -- in a sense to provide some translation ...from
15 the advisory board to the legislative committee. ... and
16 here's my thinking on that, and that sometimes carries a lot
17 more weight than we appreciate.

18 MR. SANBORN: The only concern I have with that is if
19 legislators ... a legislative per diem ... fiscal note ...
20 getting spiked. So my concern would be, if you want to invite
21 legislators ... it runs the risk of scuttling the whole
22 process, just because ...

23 MR. DAVIES: That's a good point ... ex officio
24 capacity, but unofficially. Anybody else have any thoughts on
25 any of the subjects today? What I hope that we'll do is these

1 types of discussions are very useful. What I want to get out
2 of them ... might become recommendations, and I see that as how
3 we will move these good discussions to ones that will
4 eventually lead to things that we can decide on whether we're
5 going to recommendIf anybody has any final words?

6 MR. GROVER: Yeah. We're now accepting people that
7 want to volunteer, this Best Management ...

8 MR. DAVIES: Ben's already ...

9 MR. GROVER: Right.

10 MR. DAVIES: Sam Murray.

11 MR. GROVER: Yeah, thank you.

12 MR. DAVIES: Any of the contractors?

13 MR. GROVER: I'm looking at my buddy here, on my
14 left, far left.

15 MR. MURPHY: ... before I volunteer ...

16 MR. DAVIES: That's a problem with ...

17 MR. GROVER: I just think it's needed.

18 MR. DAVIES: ... as efficiently as possible, probably
19 by email or phone ...

20 MR. GROVER: My thought process was that if I could
21 get Jeff, you, and I together ...

22 MR. DAVIES: Sure.

23 MR. GROVER: -- we can start ...

24 MR. DAVIES: Yeah. And I already mentioned that to
25 Jeff ...

1 MR. GROVER: Yeah.

2 MR. DAVIES: Okay. ... rest of the meeting time to
3 yourself. Spend it wisely. Don't get caught speeding.
4 Kathleen says that ... what she asserts. Thank you for coming.

5 CONFERENCE ADJOURNED (July 26, 2012, 12:38 p.m.)

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C E R T I F I C A T E

I hereby certify that this is a true and accurate transcript of the proceedings which have been electronically recorded in this matter on the aforementioned hearing date.

D. Noelle Forrest

D. Noelle Forrest, Transcriber